

SERVED: May 21, 1999

NTSB Order No. EA-4769

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 21st day of May, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15456
v.)	
)	
WILLIAM J. EARLE,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the notice of appeal in this proceeding because it was not, as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821),¹ filed by the respondent within 10 days after the law judge served a written decision and order on April 1, 1999.² We will grant the

¹Section 821.47 provides as follows:

§ 821.47 **Notice of Appeal.**

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served.

²The law judge's order denied respondent's motion for dismissal and granted the Administrator's motion for summary judgment on a complaint seeking the revocation of respondent's commercial pilot certificate (No. 001365746) pursuant to section 61.15(a)(2) of the Federal Aviation Regulations, 14 CFR Part 61,

motion.

In a motion filed prior to the Administrator's, the respondent, acknowledging advice that his notice of appeal was filed one day late (i.e., on April 13, 1999), seeks a finding that good cause existed for the tardy submission. Essentially, respondent's counsel asserts that the law judge's order was not docketed when it was received at his office because the secretary responsible for doing so, and for notifying him of its receipt, appears to have gone on leave before accomplishing that task, and the secretary's temporary replacement did not discover the undocketed order until after business hours on the date an appeal from the order was due for filing.³

Without good cause to excuse a failure to file a notice of appeal on time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). In this connection, we do not find good cause for the untimely filing in respondent's counsel's explanation for the missed deadline. Counsel who choose to rely on support staff to help them meet their responsibilities, by performing such tasks as docketing orders or tracking deadlines, run the risk that clerical mistakes, omissions, or errors may deprive them of actual notice that an important document requiring prompt attention or processing has been received. It follows that good cause would rarely exist for excusing a procedural default resulting from the taking of such a risk.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's "Motion for Good Cause" is denied; and
2. The Administrator's motion to dismiss is granted.

Daniel D. Campbell
General Counsel

(..continued)
for his federal court drug convictions.

³The record suggests that the secretary went on leave before the order was received at respondent's counsel's office, as the return receipt for the order reflects that it was delivered on April 5, three days after the replaced secretary's last day.

⁴It is also worth observing that a heightened level of supervision of staff would appear to be warranted during a period of administrative personnel transition.